

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GRAYLING DAVIS,
Petitioner,

v.

BERNARD BRADY,
Superintendent, Old Colony
Correctional Center,

Respondent.

Civil Action No. 04-10386-MLW

**ASSENTED-TO MOTION TO EXTEND TIME
TO RESPOND TO PETITION FOR WRIT OF HABEAS CORPUS**

The respondent, by and through his counsel, the Attorney General of the Commonwealth of Massachusetts, hereby requests that the Court extend the time within which he must respond to the Petition for Writ of Habeas Corpus that is the subject of the captioned action. The petitioner intends to amend his habeas petition and on August 5, 2004, the petitioner moved for additional time to seek said amendment. By this motion, the respondent requests an extension of thirty (30) days from the date on which the petitioner's amended pleading is ruled upon to respond to said amendment. The petitioner's counsel has assented to the requested extension. As grounds for this motion, the respondent states as follows:

1. The records relating to the petitioner's underlying state-court convictions are maintained by the Office of the District Attorney for Middlesex County (the "Middlesex District Attorney").
2. Upon receipt of this Court's Order, the undersigned assistant attorney general promptly made a request to the Middlesex District Attorney for assembly and production of relevant portions of the underlying state-court record, including, but not limited to, copies of the trial transcripts and post-conviction proceedings. The undersigned counsel has not yet received all of the state-court records, including the trial transcripts, the appellate briefs, or the petitioner's application for further appellate

review to the Massachusetts Supreme Judicial Court.

3. Without the relevant records, the respondent cannot meaningfully evaluate threshold defenses under the Antiterrorism and Effective Death Penalty Act (AEDPA), such as whether the petitioner properly exhausted available state-court remedies as required by 28 U.S.C. § 2254(b)(1) and whether the petition is timely filed in accordance with 28 U.S.C. § 2244(d).

4. On August 5, 2004, moreover, the petitioner moved for a sixty-day extension of time to amend his petition.

5. The respondent cannot meaningfully evaluate and respond to the petitioner's prospective amendments until the petitioner receives and has time to review the amended pleadings.

6. The extension sought herein will enable the respondent to compile and review all of the relevant records, evaluate any amended pleadings and, thereby, be in a position to meaningfully respond to the petition.

WHEREFORE, the present motion should be allowed and an order should enter allowing the respondent thirty (30) days from the date on which the petitioner's amended pleading is ruled upon to answer or otherwise respond to the petition.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

Dated: August 12, 2004

/s/ Natalie S. Monroe
Natalie S. Monroe (BBO # 562383)
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, MA 02108
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RULE 7.1 CERTIFICATION

I hereby certify that I conferred with the plaintiff's counsel, James M. Fox, Esq., by telephone on August 4, 2004. Mr. Fox assented to the requested extension.

/s/ Natalie S. Monroe
Natalie S. Monroe

Certificate of Service

I, Natalie S. Monroe, hereby certify that, on August 12, 2004, I caused to be served a true and correct copy of the foregoing document by mailing a copy of the same by first-class mail, postage prepaid, and addressed to the petitioner's counsel, James M. Fox, Esq., 84 State Street, Suite 300, Boston, Massachusetts 02109.

/s/ Natalie S. Monroe
Natalie S. Monroe